

Sustainability, law and the environment

New hope for addressing plastic pollution in international environmental law?

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Plastic pollution: not a contemporary problem

The issue of plastic pollution has been recognized as a growing problem for several decades. By now it has been determined that plastic pollution poses a huge threat to all ecosystems, but especially to marine animals and coastal regions, due to plastic accumulation in the oceans.¹ It thereby does not only affect nature and its wildlife, but also humans as plastics enter our food chain via complex food webs.²

Concerns about climate change only heightened the debate on how to address and solve the issue of plastic pollution. Experts have determined that the so-called ‘plastic-climate nexus’³ poses an additional threat to our society. Almost all plastic produced today is made from fossil fuels which increases the amount of greenhouse gases added to the atmosphere, furthering global warming and ultimately climate change.⁴

Considering the urgency of this environmental issue, one could assume that plastic pollution is at the forefront of climate change discussions and international rulemaking. We argue, however, that plastic pollution has thus far been insufficiently addressed in international law.

Room for improvement: international agreements on plastic

The United Nations Framework Convention on Climate Change (UNFCCC) is one of the leading international treaties when it comes to climate change.⁵ It comprises various actions that build a framework on how the different parties should approach environmental decision-making.⁶ Plastic, however, is not addressed in the convention. Under the UNFCCC’s Conference of Parties (COP), yearly conferences are organized where the most urgent climate change issues are discussed.⁷ Considering the urgency of plastic pollution, it comes as a surprise that it was not included in the final documents of any prior conference nor the most recent one, COP26.⁸ This is problematic because global plastic pollution can no longer be ignored and its inclusion in international decision-making is critical.

Other international agreements recognize plastic waste as an issue, mainly in connection to marine pollution. Various documents concerning the protection of the marine environment directly or indirectly refer to plastic pollution.⁹

The most important ones to note are:

- The United Nations Convention on the Law of the Sea (UNCLOS)¹⁰ – indirectly¹¹
- International Convention for the Prevention of Pollution from Ships (MARPOL) – directly¹²
- The Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (1972 London Dumping Convention) in its amendment the London Protocol (1996) – directly¹³
- Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal¹⁴ – directly¹⁵

Despite the existence of such instruments, the international regulatory framework on plastic pollution continues to be fragmented and unable to effectively address the issue as a whole.¹⁶ That is because the existing regulations do not address the life cycle of plastic, but mainly aim at preventing the dumping of additional plastic waste into the oceans or addressing consequences of the mismanagement of waste. Additionally, existing national and regional solutions are not enough, as the complex and cross-border problem of plastic pollution calls for a meaningful international response.¹⁷

A New Hope? An international treaty on plastic pollution

Potential for a new, all-encompassing and legally binding agreement on plastic pollution arises at the United Nations Environment Assembly (UNEA). The UNEA has included plastic in many of its adopted resolutions, although primarily focused on marine pollution, and brought forward various proposals on how member states should adjust governance strategies to successfully address the issue.¹⁸ One major shortcoming, however, is that UNEA resolutions are not legally binding, meaning that member states do not have to implement the measures mentioned in the resolutions.¹⁹

But, new plans for addressing this gap are in the making. The Assembly will meet in early 2022 at UNEA 5.2 to discuss the drafting of a new international treaty that addresses plastic pollution.²⁰ The first draft resolution has been drawn up in late 2021, by representatives of Rwanda and Peru, with the goal of adopting it at UNEA 5.2 and the hope of drafting a treaty by the following UNEA conference.²¹ This draft approaches the plastic issue from a life-cycle perspective, dealing with plastic pollution from production to disposal.²² While many countries have expressed support for such a treaty, there has already been an alternative draft resolution proposed by Japan, which is more limited, focusing primarily on marine pollution and waste management.²³ This is problematic, as Japan is one of the biggest plastic waste producers worldwide.²⁴ Thus, this alternative draft is expected to be one central point of discussion at the upcoming UNEA conference.

However, there are more vital points this conference needs to address for the treaty to be successful:

1

Participation of the biggest plastic polluting nations must be ensured.

Next to Japan, other countries, such as the United States, are causes of concern. The U.S. has only agreed to participate in the drafting of the treaty, meaning that efforts must be revitalized to ensure U.S. commitment to such a treaty, as it is the second biggest plastic polluter in the world.²⁵

Different dimensions of plastic pollution must be addressed in a holistic way.

While two different drafts are proposed, only the Rwanda-Peru one approaches plastic pollution in a holistic way. This seems to be the more promising approach, as plastic pollution needs to be addressed in all forms, starting at its manufacture and including the waste management. This way the treaty could deal with the greenhouse gas emissions throughout the whole plastic cycle, and address the three dimensions of sustainable development – social, economic and environmental – to the same extent.²⁶

2

Sufficient support mechanisms must be established.

While many countries already have implemented national measures dealing with plastic pollution, there is always need for improvement. Thus, effective support mechanisms, such as financial or technical support, training of experts and cooperation at and with the national level are vital to ensure all member states have realistic chances of abiding to the treaty.²⁷

3

A successful compliance mechanism needs to be in place.

For the treaty to be successful, coordination and states parties' willingness to report their progress is not enough. Such efforts will facilitate the treaty's stability, but the elaboration of measures to enhance implementation and balanced compliance mechanisms are crucial to strengthen states' shared commitments.²⁸

4

Outlook

For now, the nature and impact of the planned treaty can only be speculated. It can be argued, however, that such an international, legally binding, environmental agreement would be a step into the right direction and, if successful, revolutionary when it comes to addressing the issue of global plastic pollution. One can only hope that it does not come too late and participation is sufficient, so the detrimental effects that plastic pollution has already had on our planet can finally be counteracted and further damage avoided.

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